

AMENDED IN SENATE APRIL 3, 2006

AMENDED IN ASSEMBLY JANUARY 23, 2006

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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 759

Introduced by Assembly Member Lieber

February 18, 2005

~~An act to amend Sections 17204 and 17206 of the Business and Professions Code, relating to unfair competition. An act relating to the health care districts.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 759, as amended, Lieber. ~~Unfair competition: actions by city attorneys.~~ *El Camino Hospital District.*

Existing law, the Local Health Care District Law, provides for the formation of local health care districts, and authorizes a district to transfer, at fair market value, any part of its assets to one or more corporations to operate and maintain the assets, subject to certain requirements, including the approval of a majority of the voters of the district in certain circumstances. Existing law also authorizes the transfer of a district's assets, for the benefit of the communities served by the district, in the absence of adequate consideration, subject to certain requirements.

Existing law imposes similar requirements on the transfer of assets by El Camino Hospital-Corporation, a nonprofit public benefit corporation that owns and operates El Camino Hospital pursuant to a

transfer of assets from the El Camino Hospital District under the above-described provisions.

This bill would make various findings and declarations regarding the El Camino Hospital District and El Camino Hospital-Corporation, including a finding and declaration that the El Camino Hospital and any other entities operated by the corporation are deemed to be public entities for purposes of laws requiring financial disclosure and establishing employee rights.

This bill would also make a legislative finding and declaration regarding the need for special legislation.

~~Existing law authorizes specified governmental agencies to bring an action for unfair competition and to recover a civil penalty from the defendant in those actions. Under existing law, a city attorney for a city or city and county with a population in excess of 750,000 or for a city and county if the district attorney has consented may bring an unfair competition action and recover a civil penalty.~~

~~This bill would delete the limitations on unfair competition actions brought by a city attorney for a city and county, allowing the city attorney of any size city and county, without the consent of the district attorney, to proceed with the action and recover a civil penalty. The bill would also allow a city attorney of any size city to proceed with an action with the consent of the district attorney and recover a civil penalty.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) *The Legislature hereby finds and declares*
- 2 *all of the following:*
- 3 (1) *There is a unique relationship between the El Camino*
- 4 *Hospital, a California nonprofit public benefit corporation ("El*
- 5 *Camino Hospital-Corporation") and the El Camino Hospital*
- 6 *District, because the district's publicly elected board members*
- 7 *exert direct control over the El Camino Hospital-Corporation*
- 8 *through the appointment and removal of the only members of the*
- 9 *corporation's board.*
- 10 (2) *Because the El Camino Hospital District is a public entity*
- 11 *that has direct and sole control of the El Camino*
- 12 *Hospital-Corporation's board, the district is, pursuant to*

1 established legal principles, thereby deemed to be in direct
2 control of the operations of the El Camino Hospital and any
3 other entities operated by the corporation.

4 (3) Therefore, the El Camino Hospital and any other entities
5 operated by the corporation are deemed to be public entities for
6 purposes of laws requiring financial disclosure and establishing
7 employee rights.

8 (b) This section shall remain in effect as long as the El
9 Camino Hospital District maintains sole or majority control over
10 the El Camino Hospital-Corporation or any other corporation,
11 trust, association, partnership, limited liability company, or other
12 person or entity that receives district or corporation assets that
13 are subject to the requirements of Section 32127.7 of the Health
14 and Safety Code.

15 SEC. 2. Due to the unique circumstances of the relationship
16 between the El Camino Hospital District and the El Camino
17 Hospital-Corporation, the Legislature hereby finds and declares
18 that a general statute cannot be made applicable within the
19 meaning of Section 16 of Article IV of the California
20 Constitution. Therefore Section 1 of this act is applicable only to
21 the El Camino Hospital District.

22 SECTION 1. ~~Section 17204 of the Business and Professions~~
23 ~~Code is amended to read:~~

24 ~~17204. Actions for Injunctions by Attorney General, District~~
25 ~~Attorney, County Counsel, and City Attorneys~~

26 ~~Actions for any relief pursuant to this chapter shall be~~
27 ~~prosecuted exclusively in a court of competent jurisdiction by~~
28 ~~any person who has suffered injury in fact and has lost money or~~
29 ~~property as a result of such unfair competition or in the name of~~
30 ~~the people of the State of California upon their own complaint or~~
31 ~~upon the complaint of any board, officer, person, corporation, or~~
32 ~~association by any of the following:~~

33 ~~(a) The Attorney General.~~

34 ~~(b) A district attorney.~~

35 ~~(c) A county counsel authorized by agreement with the district~~
36 ~~attorney in an action involving the violation of a county~~
37 ~~ordinance.~~

38 ~~(d) A city attorney of a city having a population in excess of~~
39 ~~750,000.~~

40 ~~(e) A city attorney of a city and county.~~

1 ~~(f) A city attorney, with the consent of the district attorney.~~

2 ~~(g) A city prosecutor, in a city having a full-time city~~
3 ~~prosecutor, with the consent of the district attorney.~~

4 ~~SEC. 2. Section 17206 of the Business and Professions Code~~
5 ~~is amended to read:~~

6 ~~17206. Civil Penalty for Violation of Chapter~~

7 ~~(a) Any person who engages, has engaged, or proposes to~~
8 ~~engage in unfair competition shall be liable for a civil penalty not~~
9 ~~to exceed two thousand five hundred dollars (\$2,500) for each~~
10 ~~violation, which shall be assessed and recovered in a civil action~~
11 ~~brought in the name of the people of the State of California by~~
12 ~~any of the parties described in subdivisions (a) to (g), inclusive of~~
13 ~~Section 17204, in any court of competent jurisdiction.~~

14 ~~(b) The court shall impose a civil penalty for each violation of~~
15 ~~this chapter. In assessing the amount of the civil penalty, the~~
16 ~~court shall consider any one or more of the relevant~~
17 ~~circumstances presented by any of the parties to the case,~~
18 ~~including, but not limited to, the following: the nature and~~
19 ~~seriousness of the misconduct, the number of violations, the~~
20 ~~persistence of the misconduct, the length of time over which the~~
21 ~~misconduct occurred, the willfulness of the defendant's~~
22 ~~misconduct, and the defendant's assets, liabilities, and net worth.~~

23 ~~(c) If the action is brought by the Attorney General, one-half~~
24 ~~of the penalty collected shall be paid to the treasurer of the~~
25 ~~county in which the judgment was entered, and one-half to the~~
26 ~~General Fund. If the action is brought by a district attorney or~~
27 ~~county counsel, the penalty collected shall be paid to the~~
28 ~~treasurer of the county in which the judgment was entered.~~
29 ~~Except as provided in subdivision (c), if the action is brought by~~
30 ~~a city attorney or city prosecutor, one-half of the penalty~~
31 ~~collected shall be paid to the treasurer of the city in which the~~
32 ~~judgment was entered, and one-half to the treasurer of the county~~
33 ~~in which the judgment was entered. The aforementioned funds~~
34 ~~shall be for the exclusive use by the Attorney General, the district~~
35 ~~attorney, the county counsel, and the city attorney for the~~
36 ~~enforcement of consumer protection laws.~~

37 ~~(d) The Unfair Competition Law Fund is hereby created as a~~
38 ~~special account within the General Fund in the State Treasury.~~
39 ~~The portion of penalties that is payable to the General Fund or to~~
40 ~~the Treasurer recovered by the Attorney General from an action~~

1 or settlement of a claim made by the Attorney General pursuant
2 to this chapter or Chapter 1 (commencing with Section 17500) of
3 Part 3 shall be deposited into this fund. Moneys in this fund,
4 upon appropriation by the Legislature, shall be used by the
5 Attorney General to support investigations and prosecutions of
6 California's consumer protection laws, including implementation
7 of judgments obtained from such prosecutions or investigations
8 and other activities which are in furtherance of this chapter or
9 Chapter 1 (commencing with Section 17500) of Part 3.

10 (e) If the action is brought at the request of a board within the
11 Department of Consumer Affairs or a local consumer affairs
12 agency, the court shall determine the reasonable expenses
13 incurred by the board or local agency in the investigation and
14 prosecution of the action.

15 Before any penalty collected is paid out pursuant to subdivision
16 (e), the amount of any reasonable expenses incurred by the board
17 shall be paid to the Treasurer for deposit in the special fund of
18 the board described in Section 205. If the board has no such
19 special fund, the moneys shall be paid to the Treasurer. The
20 amount of any reasonable expenses incurred by a local consumer
21 affairs agency shall be paid to the general fund of the
22 municipality or county that funds the local agency.

23 (f) If the action is brought by a city attorney of a city and
24 county, the entire amount of the penalty collected shall be paid to
25 the treasurer of the city and county in which the judgment was
26 entered for the exclusive use by the city attorney for the
27 enforcement of consumer protection laws. However, if the action
28 is brought by a city attorney of a city and county for the purposes
29 of civil enforcement pursuant to Section 17980 of the Health and
30 Safety Code or Article 3 (commencing with Section 11570) of
31 Chapter 10 of Division 10 of the Health and Safety Code, either
32 the penalty collected shall be paid entirely to the treasurer of the
33 city and county in which the judgment was entered or, upon the
34 request of the city attorney, the court may order that up to
35 one-half of the penalty, under court supervision and approval, be
36 paid for the purpose of restoring, maintaining, or enhancing the
37 premises that were the subject of the action, and that the balance
38 of the penalty be paid to the treasurer of the city and county.

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